

REMARKS-General

1. Upon review of the original specification, the applicant has amended the specification to more clearly and distinctly describe the subject matter of the instant invention, and which provides full antecedent basis to the claims. No new matter has been included in the amended specification.

2. The claims 10-12 are amended to include further limitations previously brought forth in the disclosure to more particularly point out and distinctly claim the subject matter of the instant invention, as pursuant to 35USC112. No new matter has been included. The claims 13-15 are cancelled in the instant invention.

Response to Rejection of Claims 1-15 under 35USC103

3. The applicant respectfully submits that this is clearly **not** a proper basis for combining references in making out an obviousness rejection of the present claims. Rather, the invention must be considered as a whole and there must be something in the reference that suggests the combination or the modification. See *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 U.S.P.Q. 481, 488 (Fed. Cir. 1984) ("The claimed invention must be considered as a whole, and the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination"), *In re Gordon*, 221 U.S.P.Q. 1125, 1127 (Fed. Cir. 1984), ("The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.") *In re Laskowski*, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989), ("Although the Commissioner suggests that [the structure in the primary prior art reference] could readily be modified to form the [claimed] structure, "[t]he mere fact that the prior art could be modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.")

Response to Rejection of Claims 1, 10 and 13 over Tang in view of either Malis or Fisher under 35USC103

4. The Examiner appears to reason that since Tang teaches a folding chair and both Malis and Fischer teach cushioned support for add comfort, it would have been

obvious to one skilled in the art to form the supporting member of Tang as a cushioned support.

5. In the present case, Tang, Malis and Fischer perform very different types of products, wherein

(i) Tang merely suggests a foldable chair without teaching of any cushioned seat and back support;

(ii) Malis merely teaches a foldable cot having a cover disposed therein a relatively thin interlining or filling 12, as shown in Figs. 3 and 4; and

(iii) Fischer teaches a foldable cot comprising a mattress M containing filler therein, as shown in Fig. 7.

6. In any case, even combining Tang and either Malis or Fischer would not provide the invention as claimed -- a clear indicia of nonobviousness. *Ex parte Schwartz*, slip op. p.5 (BPA&I Appeal No. 92-2629 October 28, 1992), ("Even if we were to agree with the examiner that it would have been obvious to combine the reference teachings in the manner proposed, the resulting package still would not comprise zipper closure material that terminates short of the end of the one edge of the product containing area, as now claimed.").

7. That is, modifying Tang with either Malis or Fisher, as proposed by the Examiner, would not provide a collapsible chair comprising a cushioned seat and back support comprising a support layer, a cover layer overlapped with the support layer, and **a cushion layer sandwiched between the support layer and the cover layer, wherein the back support portion of the support layer is mounted to the back frame legs and the seat support portion of the support layer is supported by the front upper frame joints.**

8. Throughout the disclosure of Tang, there is neither suggestion nor desirability of providing a cushioned seat and back support that comprises a cushion layer sandwiched between the support layer and the cover layer. In Malis and Fischer, both of them fail to disclosure of how to mount the cushioned seat and back support to the foldable chair frame. The fact indicates that that neither Tang, Malis nor Fischer,

separately or in combination, suggest or make any mention whatsoever of (i) how to mount the cushioned seat and back support to the foldable chair frame, as recited in claim 1; and (ii) providing a pair of fabric arm supports each comprising a support layer, a cover layer, a cushion layer, and an inner layer, wherein the cushion layer is sandwiched between the support layer and the cover layer and overlappedly bonded to the cover layer, wherein the inner layer which is provided between the cushion layer and the support layer is overlappedly bonded to the support layer so as to strengthen and support the support layer, as claimed in claim 10.

9. The claim 13 has been cancelled in the instant invention.

10. Applicant believes that for all of the foregoing reasons, the claims 1 and 10 are in condition for allowance and such action is respectfully requested.

Response to Rejection of Claim 2 over Tang, Malis and Fischer in view of Haberkorn under 35USC103

11. The Examiner appears to reason that since the use of an elongated tape for securing the ends of quilted or cushioned members is shown to be old and well know in the art by Haberkorn, it would have been obvious to one skilled in that art to have utilized such for the ends of the support of Tang.

12. The applicant respectfully submits that "The mere fact that a reference could be modified to produce the patented invention would not make the modification obvious unless it is suggested by the prior art." Libbey-Owens-Ford v. BOC Group, 4 USPQ 2d 1097, 1103 (DCNJ 1987). While it is permissible to modify a reference's disclosure in the examination of patent applications, such modifications are not allowed if they are prompted by an applicant's disclosure, rather than by a reasoned analysis of the prior art and by suggestions provided therein. In re Lesilie, 192 USPQ 427 (CCPA 1977).

13. In hindsight, the Examiner may feel that it would be obvious to have utilized the elongated tape as shown in Haberkorn. Such hindsight reconstruction is not a permissible method of constructing a rejection under 35 U.S.C. 103. In re Warner and Warner, 154 USPQ 173, 178 (CCPA 1967). In fact, none of the cited arts suggest a cushioned seat and back support and a foldable chair frame **in a combination of collapsible chair** as claimed in claim 1, the conventional collapsible chair as shown in

Tang has no need to include the structural feature of providing an elongated edge protection strap extending along surrounding edges of the cushioned seat and back support **to sandwich the surrounding edges of the support layer and the cover layer between the first leaf and the second leaf** of the edge protection strap, as claimed in claim 2.

14. Applicant believes that for all of the foregoing reasons, the claim 2 is in condition for allowance and such action is respectfully requested

Response to Rejection of Claims 3, 4, 11 and 14 over Tang, Malis, Fischer and Haberkorn in view of Aoki et al under 35USC103

15. The Examiner alleges that Figs. 1 to 4 of Aoki et al teach the formation of a cushioned support member for a seat wherein the layers are bonded together, and in view of this suggestion, to have bonded the layers of the support member of Tang, as modified above, for purposes of durability, would have been obvious to one with ordinary skill in the art.

16. As stated above, See *Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick*, 221 U.S.P.Q. 481, 488 (Fed. Cir. 1984) ("The claimed invention must be considered as a whole, and the question is **whether there is something in the prior art as a whole to suggest the desirability**, and thus the obviousness, of making the combination"), In re Laskowski, 10 U.S.P.Q.2d 1397, 1398 (Fed. Cir. 1989), ("Although the Commissioner suggests that [the structure in the primary prior art reference] could readily be modified to form the [claimed] structure, "[t]he mere fact that the prior art could be modified would not have made the modification obvious unless the prior art suggested the desirability of the modification.")

17. In any case, even combining Tang, Malis, Fischer, Hanberkorn and Aoki et al would not provide the suggestion or desirability of bonding the cushion layer to the cover layer of the cushioned seat and back support of the collapsible chair of the invention as claimed in claims 3 and 4 -- a clear indicia of nonobviousness.

18. The claim 14 is cancelled.

Respons to Rejection of Claims 5-9, 12 and 15 over Tang, Malis, Fischer, Haberkorn, and Aoki et al in view of Goodman under 35USC103

19. Goodman et al merely suggests a bedding with cushioning surface. However, the claims 5 and 6 claim "an inner layer provided between the cushion layer and the support layer wherein the **inner layer is overlappedly bonded to the support layer** so as to strengthen and support the support layer" and the claims 7-9 particularly claim the cushioned seat and back support further has at least **two partitions** provided on the back support portion of the cushioned seat and back support wherein **the partitions are formed by an elongated positioning strap transversely attached to the back support portion by stitching through the cover sheet to the support layer** such that the elongated positioning strap is formed between the two partitions.

20. However, the only mention of the inner layer overlappedly bonded to the support layer and forming **two** partitions by an **elongated positioning strap** transversely attached to the back support portion is in applicants own specification and claims. Accordingly, it appears that the Examiner has fallen victim to the insidious effect of a hindsight analysis syndrome where that which only the inventor taught is used against the teacher in W.L Gore and Associates v. Garlock, Inc., 220 USPQ 303, 312-313 (Fed. Cir. 1983) cert. denied, 469 U.S. 851 (1984).

21. In addition, the Court of Appeal of the Federal Circuit has stated, "[V]irtually all [inventions] are combinations of old elements." Environmental Designs, Ltd. V. Union Oil Co., 713 F.2d 693, 698, 218 USPQ 865, 870 (Fed. Cir. 1983); see also Richdel, Inc. v. Sunspool Corp., 714 F.2d 1573, 1579-80, 219 USPQ 8, 12 (Fed. Cir. 1983). Thus, "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." In re Fine, 5 USPQ 2d 1600 (Fed. Cir. 1988).

22. Accordingly, applicants believe that the rejection of claims 5-9 is improper and should be withdrawn.

23. The claim 15 is cancelled in the instant invention.

24. **Regarding the claims 11 and 12**, both Aoki et al and Goodman et al fail to suggest any arm rest arrangement comprising a fabric arm supports that comprises a

support layer, a cover layer, a cushion layer, and an inner layer, wherein the cushion layer is sandwiched between the support layer and the cover layer and overlappedly bonded to the cover layer, wherein the inner layer which is provided between the cushion layer and the support layer is overlappedly bonded to the support layer so as to strengthen and support the support layer.

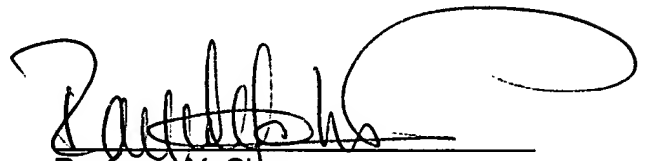
25. In any case, even combining Tang, Malis, Fischer, Haberkorn, Aoki et al, and Goodman et al would not provide the invention as claimed in claims 11 and 12. Applicant believes that for all of the foregoing reasons, the claims 11 and 12 are in condition for allowance and such action is respectfully requested

The Cited but Non-Applied References

26. The cited but not relied upon references have been studied and are greatly appreciated, but are deemed to be less relevant than the relied upon references.

27. In view of the above, it is submitted that the claims are in condition for allowance. Reconsideration and withdrawal of the rejection are requested. Allowance of claims 1-12 at an early date is solicited.

Respectfully submitted,



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